

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

C.C. AND A.C.,
Appellants,

v.

KATHRYN C. AND FREDERICK C.,
Appellees.

JESSE H.,
Appellant,

v.

KATHRYN C. AND FREDERICK C.,
Appellees.

Nos. 2 CA-JV 2019-0049 and 2 CA-JV 2019-0052 (Consolidated)
Filed September 17, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20180208
The Honorable Casey F. McGinley, Judge

AFFIRMED

C.C., A.C., AND JESSE H. v. KATHRYN C. AND FREDERICK C.
Decision of the Court

COUNSEL

Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Appellants C.C. and A.C.

Joel Feinman, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellee Kathryn C.

James L. Fullin, Pima County Legal Defender
By Gabriel M. Muñoz, Assistant Legal Defender, Tucson
Counsel for Appellee Frederick C.

The Huff Law Firm PLLC, Tucson
By Laura J. Huff
Counsel for Appellant Jesse H.

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 Jesse H. appeals from the juvenile court's order denying his petition seeking termination of the parental rights of Kathryn C. and Frederick C. to their two children, C.C. (born January 2007) and A.C. (born April 2012). He challenges the court's conclusion that he failed to prove the parents had abandoned the children. And, he maintains, the court erred when it denied termination on abuse grounds despite "seemingly" finding "that the parents had abused" C.C., and that there was "substantial evidence" of neglect. We affirm.

¶2 To sever a parent's rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that terminating the parent's rights is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz.

C.C., A.C., AND JESSE H. v. KATHRYN C. AND FREDERICK C.
Decision of the Court

279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14 (App. 2004). We will affirm the order if the findings upon which it is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view that evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶3 In July 2016, Jesse—the children’s maternal uncle—allowed the children to stay with him in Tucson for the school year after their parents had been evicted from their Texas home and were living in a hotel. The children have stayed with Jesse for over two years, during which time the parents have not visited, but have communicated regularly by phone and text until the time Jesse sought termination of their rights. The parents have sent gifts and provided some financial support—monthly wire transfers to the children’s grandmother, who lives with Jesse and the children, and a payment to cover a portion of the cost of dental work for A.C. In April 2018, Jesse filed a petition to terminate¹ the parents’ rights to C.C. and A.C. on the grounds of abandonment, abuse and neglect, and—as to Frederick—chronic substance abuse or mental illness. After a contested hearing, the court denied Jesse’s termination petition. This appeal followed.

¶4 Jesse first contends the juvenile court erred in denying his motion to terminate the parent’s rights on abandonment grounds. He argues that he established a *prima facie* case of abandonment that the parents failed to rebut. To prove abandonment, Jesse was required to demonstrate the parents failed “to provide reasonable support and to maintain regular contact with the child, including providing normal supervision.” A.R.S. § 8-531(1); *see also* § 8-533(B)(1). However, what constitutes reasonable support, regular contact, and normal supervision depends on the circumstances of each case. *Kenneth B. v. Tina B.*, 226 Ariz. 33, ¶ 15 (App. 2010). “Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes *prima facie* evidence of abandonment.” § 8-531(1).

¹Jesse also filed a petition alleging the children were dependent, which the court granted. That ruling is not at issue in this appeal.

C.C., A.C., AND JESSE H. v. KATHRYN C. AND FREDERICK C.
Decision of the Court

¶5 Although Jesse concentrates his argument on what he claims was a “prima facie case of abandonment” under § 8-531(1), the juvenile court did not address that issue and Jesse has not asserted that he raised this argument below. Nor has he argued, much less established, that the parents’ lack of a “normal parental relationship” with the children was “without just cause,” as required by § 8-531(1). Thus, insofar as Jesse asserts we must reverse because the parents did not rebut a prima facie case of abandonment, he has waived that argument, and we do not address it. *See Bennigno R. v. Ariz. Dep’t of Econ. Sec.*, 233 Ariz. 345, ¶ 11 (App. 2013) (claims unsupported by “proper and meaningful argument” warrant summary rejection).

¶6 Jesse maintains that no reasonable court could conclude the parents had not abandoned C.C. and A.C. We disagree. Although Jesse describes evidence that, viewed in isolation, could support an abandonment finding, he discredits contrary evidence, including the parents’ testimony that, despite economic difficulties, they sent money for the children’s care as well as gifts, and maintained contact with them via phone calls and texts using a cell phone they had provided for them. We do not reweigh the evidence, and Jesse has not established that the evidence, viewed in the light most favorable to the court’s ruling, compels a finding of abandonment.

¶7 Jesse next contends the juvenile court erred by denying his petition to terminate the parents’ rights on abuse grounds. Termination is warranted when a parent has “willfully abused a child” and includes “situations in which the parent knew or reasonably should have known that a person was abusing” the child. § 8-533(B)(2). “‘Abuse’ means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage.” A.R.S. § 8-201(1).

¶8 Jesse argues the juvenile court had “seemingly found that the parents had abused” C.C. but “appear[ed] to elevate the burden of proof from clear and convincing evidence to beyond a reasonable doubt and impose[d] requirements” beyond that required by the law. Jesse bases this argument on the court’s comments that the abuse allegations were “troubling and of concern” but that termination was not warranted because it was “unclear from the record when this abuse occurred, and how often it occurred” and whether the parents “currently use[] physical discipline as a method of parenting.”

C.C., A.C., AND JESSE H. v. KATHRYN C. AND FREDERICK C.
Decision of the Court

¶9 The juvenile court's comments do not suggest it applied an incorrect legal standard but instead reflect only that it weighed the evidence and found it insufficient to establish willful abuse. *See* § 8-533(B)(2); *see also State v. Williams*, 220 Ariz. 331, ¶ 9 (App. 2008) (we presume trial courts know and follow the law). Although C.C. told a consultant who performed a social study that Frederick had abused him, both parents denied the abuse had occurred. It was for the juvenile court to resolve this conflicting evidence. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16 (App. 2005) ("[C]onflicts in the evidence are for the fact-finder to resolve . . .").

¶10 Jesse last asserts the juvenile court erred by rejecting his claim that termination was warranted on neglect grounds under § 8-533(B)(2). Neglect occurs when a parent is unable or unwilling to provide a child "supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." § 8-201(25)(a). "A parent's inability or unwillingness to provide supervision must be such that it can fairly be shown, by clear and convincing evidence, to render him 'unfit to be a parent.'" *Jade K. v. Loraine K.*, 240 Ariz. 414, ¶ 12 (App. 2016) (quoting *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 (1996)).

¶11 Jesse argues that, had he not provided for the children, they would have been harmed by the parents' failure to provide "food, clothing, and shelter" and to ensure access to adequate medical care. But Jesse has cited no authority suggesting there is an "unreasonable risk of harm" to the children in such circumstances, as required for a finding of neglect as defined by § 8-201(25)(a). Nor has he cited any authority suggesting that a parent with limited financial means neglects a child by leaving the child with a relative who can provide adequate care.

¶12 Jesse additionally asserts that the alleged history of domestic violence between the parents constitutes neglect. But here again he has cited no authority suggesting that exposure to domestic violence necessarily constitutes neglect or developed any argument that the children were at an unreasonable risk of harm due to any such exposure. We thus need not address these arguments further. *See Bennigno R.*, 233 Ariz. 345, ¶ 11.

¶13 We affirm the juvenile court's order denying Jesse's termination petition.